



Department of Justice

United States Attorney Richard S. Hartunian
Northern District of New York

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FOUNDERS OF MCGINN, SMITH & CO. INC. SENTENCED

McGinn Will Serve 15 Years in Prison and Smith Will Serve 10 Years

UTICA, NEW YORK - Timothy M. McGinn and David L. Smith, former owners of the Albany broker-dealer McGinn, Smith & Co., Inc. were sentenced today, in United States District Court in Utica, to significant terms of imprisonment, announced United States Attorney Richard S. Hartunian, Toni M. Weirauch, Special Agent-in-Charge, Internal Revenue Service, Criminal Investigation, New York Field Office, and Andrew W. Vale, Special Agent-in-Charge, Federal Bureau of Investigation, Albany Division. McGinn was sentenced to serve 15 years in federal prison and to pay a \$100,000 fine. Smith was sentenced to serve 10 years in federal prison and to pay a \$50,000 fine. The defendants were convicted of conspiracy to commit mail and wire fraud, mail fraud, wire fraud, securities fraud, and filing false tax returns in February 2013, following a five-week jury trial. In addition to the prison terms and fines, U.S. District Judge David N. Hurd ordered \$6,336,440 in forfeiture, a total of \$5,992,800 in restitution, and 3 years of supervised release.

In sentencing McGinn, Judge Hurd said that what caused McGinn's downfall was his arrogance in conducting business without regard for the law or the rules as long as he made money for himself and his favorite clients. In sentencing Smith, Judge Hurd said that Smith had led an impressive life and had an impressive family and friends, but what caused Smith's downfall was going along with McGinn when he knew that what they were doing was wrong. Judge Hurd remanded both McGinn and Smith to custody to begin serving their sentences.

U.S. Attorney Hartunian said:

"As the stories told by the victims during the sentencing hearings today made clear, nothing can ever undo the terrible harm Timothy M. McGinn and David L. Smith inflicted on investors. Through false representations and material omissions, McGinn and Smith obtained investors' hard-earned money and used it as their own. They covered their tracks by directing the creation of false accounting entries and the movement of money among accounts, and by misleading regulators. Their longstanding personal enrichment plan defrauded 841 victims of \$30 million, leaving many investors devastated. The sentences imposed today send a strong message to those entrusted with investor funds that fraudulent business practices and tax cheating will not be tolerated.

During the past three years, my office has charged ten people with investor fraud resulting in \$64.2 million of loss to 1,676 victims. The eight defendants convicted to date were sentenced to more than 60 years in

federal prison. These cases reflect our longstanding commitment to combating the corruption of the financial marketplace that shatters lives and undermines our economy. We will continue to work with all of our law enforcement partners to identify, investigate, and vigorously prosecute investor fraud cases. We are grateful for the dedication and thoroughness of IRS Criminal Investigations and the FBI in McGinn Smith and other investor fraud cases.”

Special Agent-in-Charge Weirauch stated, “In many ways, this investigation was all about trust: the trust investors place in their investment professionals and the trust that taxpayers have that their tax system will ensure that everyone pays their fair share. The defendants have now learned the cost of violating these trusts. Furthermore, today’s sentences and the earlier trial convictions will send strong messages to those who think about doing the same.”

Special Agent-in-Charge Vale stated, “We will continue to work with our partners to investigate investment fraud schemes. The resolution of this case was the direct result of outstanding teamwork between the U.S. Attorney’s Office, the Internal Revenue Service and the FBI.”

Six victims spoke at the sentencing hearings today, telling the Court that their losses represented life savings that they needed for living expenses, the support of their families, and their retirement.

According to the superseding indictment, the purpose of the conspiracy was to mislead investors and the Financial Industry Regulatory Authority, Inc. ("FINRA") regarding the safekeeping and use of investor money raised by 17 trusts, one corporation, and other entities; the risks of the trust offerings; the performance of the underlying income streams; the source of investor payments; and the improper diversion of investor money in order to obtain money from investors and enrich themselves. As a result of the defendant's conduct, the investors were not aware that the defendants had diverted approximately \$4.1 million in connection with transactions related to the trusts for their own benefit and the benefit of another person.

The superseding indictment also alleged that, as part of the conspiracy, the defendants improperly diverted nearly \$1 million; directed false accounting entries regarding those transactions in response to a document request from the broker-dealer's regulator, FINRA; and caused the false accounting entries to be submitted to FINRA. The alleged improper diversions fell into two categories: (a) the improper diversion of more than \$473,000 of investor money from an escrow account to pay preferred clients who had unrelated investments (between May 15, 2008 and July 8, 2009); and (b) the improper diversion of \$525,000 from bank accounts for three unrelated investments to pay the broker-dealer's employees (between November 14, 2008 and April 15, 2009). The superseding indictment also alleged that the defendants improperly used a corporation to conceal and disguise the true nature of the payroll diversions by passing the money from the three unrelated investments through that corporation and then to the broker-dealer. Finally, the superseding indictment alleged that the defendants misled FINRA about the preferred client diversions and the payroll diversions by (a) directing the creation of false

accounting entries to conceal the true nature of these transactions in response to a document request from FINRA; and (b) causing the submission of these false accounting entries to FINRA.

Both McGinn and Smith were convicted on Counts 21 through 26 (securities fraud), which relate to the failure to disclose improperly diverted fees to investors in violation of federal securities laws. Counts 21 and 22 relate to \$100,000 in fees paid in connection with TDM Verifier Trust 08, and Counts 23 through 26 relate to approximately \$855,000 in fees paid in connection with Fortress Trust 08. All of these transaction fees were paid with investor money.

McGinn and Smith were also both convicted on the tax charges arising from their failure to declare the improperly diverted money on their personal tax returns for tax years 2006 through 2008 (Counts 27-29 for McGinn and Counts 30-32 for Smith). McGinn and Smith later described the money as "loans," but did not list them as such on personal financial statements. When FINRA discovered the false loan accounting entries for the diverted money, the defendants misled FINRA by directing the creation of backdated promissory notes.

Both McGinn and Smith were convicted on Count 10, and McGinn was convicted of Counts 4 through 6 and 11 through 13. Those mail and wire fraud counts relate to the Firstline Series B Trusts, which raised money from investors in connection with a loan of \$2.4 million to Firstline Security, Inc., a company that generated alarm contracts. The superseding indictment alleged that the defendants did not tell investors when Firstline filed for bankruptcy and defaulted on loans. In addition, their firm sold approximately \$600,000 of one of the Firstline investments without any disclosure of the bankruptcy or defaults. McGinn directed that investors receive \$2 million of lulling payments by transferring money from other entities controlled by McGinn and Smith.

McGinn and Smith were both convicted on Count 14, and McGinn was convicted on Count 7. Those mail and wire fraud counts relate to the Integrated Excellence Trusts, for which the defendants raised about \$1.2 million from investors in connection with a loan to benefit Integrated Excellence, Inc., which generated alarm contracts. The superseding indictment alleged that the defendants knew that the payments received from the loan were not sufficient to pay investors, but McGinn directed that investors receive lulling payments by transferring money from other entities controlled by McGinn and Smith.

McGinn and Smith were both convicted of Counts 8 and 9. Those mail fraud counts related to the improper diversion of investor money from an escrow account to pay preferred clients who had unrelated investments.

McGinn was also convicted on Counts 15 and 16. Those counts involved the diversion of approximately \$142,000 of investor money from an escrow account to make payments to investors in other trusts.

Both McGinn and Smith were convicted on Count 17, which involved \$35,000 Smith took directly from an escrow account holding investor funds for Integrated Excellence Sr. Trust 08. McGinn was convicted on Counts 18, 19, 20 which involved approximately \$310,000 that McGinn took directly from escrow accounts holding investor funds.

This case was investigated by the Internal Revenue Service, Criminal Investigation and the Federal Bureau of Investigation, and prosecuted by Assistant United States Attorneys Elizabeth C. Coombe, Richard D. Belliss, and Wayne A. Myers.

This case was brought in connection with President Barack Obama's Financial Fraud Task Force, which was established to wage an aggressive, coordinated, and proactive effort to investigate and prosecute financial crimes and hold accountable those who helped bring about the last financial crisis. With more than 20 federal agencies, 94 U.S. Attorney's Offices, and state and local partners, it is the broadest coalition of law enforcement, investigatory, and regulatory agencies ever assembled to combat fraud. Since its formation, the task force has made great strides in facilitating increased investigation and prosecution of financial crimes; enhancing coordination and cooperation among federal, state and local authorities; addressing discrimination in the lending and financial markets and conducting outreach to the public, victims, financial institutions, and other organizations. Over the past three fiscal years, the Justice Department has filed nearly 10,000 financial fraud cases against nearly 15,000 defendants. For more information on the task force, please visit www.StopFraud.gov.

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